IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 210 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
DUDHELA DILIPKUMAR JAYANTILAL - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 14.12.1994 passed by the learned Judicial Magistrate, First Class, Sihor in Criminal Case No. 540 of 1990 whereby, the respondent – accused was acquitted of the charges levelled

against him.

2.0 The brief facts of the prosecution case are as under;

2.1 The respondent herein was served with a Notice dated 13.07.1994 by the Sales Tax Department of the appellant – State calling upon the respondent to pay an amount of Rs.13,09,682/- with interest being the amount outstanding towards sales-tax payable by the respondent. In spite of the issuance of the said Notice, the respondent neither paid up the said amount of sales-tax nor remained present before the competent authority of the appellant – State as directed.

2.2 Therefore, a complaint for offence punishable u/s. 75 of the Sales Tax Act was filed against the respondent. Necessary investigation was carried out. At the end of investigation, charge-sheet was filed against the respondent with the Court of learned J.M.F.C., Sihor and, ultimately, trial was conducted.

2.3 In order to prove the guilt against the respondent, the prosecution has examined the complainant – Ramaniklal Vallabhdas Bagiyani at Exhibit – 21 and Chandulal L. Pandav at Exhibit – 33 and has also relied upon several documentary evidence. At the end of trial, the learned Magistrate acquitted the respondent from the alleged offence in question. Hence, the present appeal.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law

> and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 As per the provisions of Section 78(1) of the Sales Tax Act, 1969, if a Proprietorship firm / Company commits an offence punishable under the provisions of this Act, then the establishment itself and the persons in-charge of its administration shall be liable under the Act. Both the Notices at Exhibits – 22 & 23 have been issued in the name of the Company i.e. "M/s. Dilipkumar & Brothers". However, in the charge-sheet, the said Company, i.e. "M/s. Dilipkumar & Brothers" has not been shown as an accused but, the respondent has been shown as an accused.

7.0 The trial Court has acquitted the respondent from the alleged offence mainly on the ground that the prosecution has not

produced any evidence on record to show that the respondent was attached with the Company in question in what capacity, i.e. in the capacity of a Proprietor, Director or an Employee. What relationship existed between the said Company and the respondent has not been made out. In the absence of any such evidence on record, the respondent could not be held guilty under the provisions of the said Act.

8.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons

given by the Court the decision of which is under appeal, will ordinarily suffice."

10.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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